

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 21-147 (PAD)

[1] KEVIN BORGES-SANCHEZ,

Defendant.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
RE: RULE 11(c)(1)(B) GUILTY PLEA HEARING

I. Procedural Background:

On April 28, 2021, defendant Kevin Borges Sanchez was charged in a multi-count indictment with drug trafficking and possession of firearms. (Docket No. 1). He agreed to plead guilty to Counts Two and Five of said indictment.

Count Two charges that from on or about April 20, 2021, in the District of Puerto Rico, and within the jurisdiction of this Court, Mr. Borges-Sanchez, did knowingly and intentionally possess with intent to distribute and to distribute a mixture or substance containing a detectable amount of heroin, a Schedule I Narcotic Drug Controlled Substance in violation of Title 21, U.S.C. §§ 841(a)(1) and (b)(1)(C).

Count Five charges that from on or about April 20, 2021, in the District of Puerto Rico, and within the jurisdiction of this Court, Mr. Borges-Sanchez, did knowingly possesses firearms, that is, one (1) black and green Glock pistol model 23, bearing serial

1 number MBU989, one (1) black Glock pistol model 22, bearing serial number
2 1ENB950US, and one (1) grey Glock pistol model 45, bearing serial number BPYT679, in
3 furtherance of a drug trafficking crime for which they may be prosecuted in a court of the
4 United States, that is, possession with intent to distribute controlled substances in
5 violation of Title 21, U.S.C. § 924(c)(1)(A).
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7 Defendant appeared before me, assisted by the court interpreter, on September 6,
8 2024, after the Rule 11 hearing was referred to me by the Presiding District Judge. *See*
9 *United States v. Woodard*, 387 F.3d 1329 (11th Cir. 2004) (magistrate judge had
10 authority to conduct Rule 11 guilty plea hearing with consent of defendant). He was
11 advised of the purpose of the hearing and placed under oath with instructions that his
12 answers must be truthful lest he subject himself to possible charges of perjury or making
13 a false statement.
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15 **II. Consent to Proceed Before a Magistrate Judge:**

16 Defendant was provided with a Waiver of Right to Trial by Jury form, which he
17 signed.¹ He was advised of his right to hold all proceedings, including the change of plea
18 hearing, before a district court judge. He received an explanation of the differences
19 between the scope of jurisdiction and functions of a district judge and a magistrate judge.
20 He was informed that if he elected to proceed before me, a magistrate judge, that I would
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25 ¹ The form entitled Consent to Proceed Before a United States Magistrate Judge in a Felony Case for
26 Pleading Guilty (Fed. R. Crim. P. 11) and Waiver of Jury Trial, signed and consented by both parties is
27 made part of the record.
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1 conduct the hearing and prepare a report and recommendation, subject to review and
2 approval of the District Judge. The defendant then voluntarily consented to proceed
3 before me.

4 **III. Proceedings Under Rule 11 of the Federal Rules of Criminal**
5 **Procedure:**

6 Rule 11 of the Federal Rules of Criminal Procedure governs the acceptance of
7 guilty pleas to federal criminal violations. Pursuant to Rule 11, in order for a plea of guilty
8 to constitute a valid waiver of the defendant's right to trial, the guilty plea must be
9 knowing and voluntary. *United States v. Hernandez-Wilson*, 186 F.3d 1, 5 (1st Cir. 1999).
10 "Rule 11 was intended to ensure that a defendant who pleads guilty does so with an
11 'understanding of the nature of the charge and consequences of his plea.'" *United States*
12 *v. Cotal-Crespo*, 47 F.3d 1, 4 (1st Cir. 1995) (quoting *McCarthy v. United States*, 394 U.S.
13 459, 467 (1969)). There are three core concerns in a Rule 11 proceeding: 1) absence of
14 coercion; 2) understanding of the charges; and 3) knowledge of the consequences of the
15 guilty plea. *Cotal-Crespo*, 47 F.3d at 4 (citing *United States v. Allard*, 926 F.2d 1237, 1244
16 (1st Cir. 1991)).

17 **A. Competence to Enter a Guilty Plea**

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19 I questioned the defendant about his age, education, employment, history of any
20 treatment for mental illness or addiction, use of any medication, drugs, or alcohol, and
21 his understanding of the purpose of the hearing, all in order to ascertain his capacity to
22 understand, answer and comprehend the change of plea colloquy. I confirmed that the
23 defendant received the indictment and fully discussed the charges with his attorney and
24 was satisfied with the advice and representation he received. In addition, I further
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1 inquired whether defendant's counsel or counsel for the government had any doubt as to
2 his competency to plead, receiving answers from both that the defendant was competent
3 to enter a plea. After considering the defendant's responses, and observing his demeanor,
4 a finding was made that Mr. Borges-Sanchez was competent to plead and fully aware of
5 the purpose of the hearing.
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7 **B. Maximum Penalties**

8 Upon questioning, the defendant expressed his understanding of the maximum
9 penalties prescribed by statute for the offense to which he was pleading guilty, namely:
10 As to Count Two, a term of imprisonment of not more than ten (20) years, a fine not to
11 exceed one million dollars (\$1,000,000.00), and a supervised release term of three (3)
12 years in addition to any term of incarceration. As to Count Five, a term of imprisonment
13 of not less than five (5) years and a maximum of life, a fine not to exceed two hundred
14 and fifty thousand dollars (\$250,000.00), and a supervised release term of not more
15 than five (5) years in addition to any term of incarceration.
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17 The defendant also understood that a Special Monetary Assessment of \$100.00
18 would be imposed, to be deposited in the Crime Victim Fund, pursuant to Title 18, United
19 States Code, Section 3013(a). The court explained the nature of supervised release and
20 the consequences of revocation. The defendant indicated that he understood the
21 maximum penalties for Count Two and Five and the potential consequences of the guilty
22 plea.
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25 **C. Plea Agreement**

26 Mr. Borges-Sanchez was shown his plea agreement, and the plea agreement
27 supplement, which are part of the record, and identified his initials and signatures. He
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1 confirmed that he had the opportunity to read and discuss the plea agreement with his
2 attorney before he signed it, that it represented the entirety of his understanding with
3 the government, that he understood its terms, and that no one had made any other or
4 different promises or assurances to induce him to plead guilty.
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6 The defendant was then admonished, pursuant to Fed. R. Crim. P. 11(c)(1)(B), and
7 expressed his understanding that the terms of the plea agreement are merely
8 recommendations to the court, and that the district judge who will preside over the
9 sentencing hearing can reject the recommendation without permitting the defendant to
10 withdraw his guilty plea, and impose a sentence that is more severe than the defendant
11 might anticipate. The defendant was specifically informed that the court, after
12 considering the applicable Sentencing Guidelines, could impose a sentence different
13 from any estimate in the plea agreement or provided by his attorney, and that the court
14 had the authority to impose a sentence that is more severe or less severe than the
15 sentence called for by the Sentencing Guidelines. The defendant was advised, and
16 understood, that the Sentencing Guidelines are no longer mandatory and are thus
17 considered advisory, and that during sentencing the court will consider the sentencing
18 criteria found at Title 18, United States Code, Section 3553(a).
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21 The defendant was advised that under some circumstances he or the government
22 may have the right to appeal the sentence the court imposes, but that pursuant to the
23 plea agreement the defendant will waive his right to appeal both his sentence and his
24 conviction if the court adopts the plea agreement and sentences him according to its
25 terms and conditions.
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D. Waiver of Constitutional Rights

Mr. Borges-Sanchez was specifically advised that he has the right to persist in a plea of not guilty, and if he does so persist that he has the right to a speedy and public trial by jury, or trial before a judge sitting without a jury if the court and the government so agree; that at trial he would be presumed innocent and the government would have to prove his guilt beyond a reasonable doubt; that he would have the right to the assistance of counsel for his defense, and if he could not afford an attorney the court would appoint one to represent him throughout all stages of the proceedings; that at trial he would have the right to hear and cross examine the government's witnesses, the right to decline to testify unless he voluntarily elected to do so, and the right to the issuance of subpoenas or compulsory process to compel the attendance of witnesses to testify. He was further informed that if he decided not to testify or put on evidence at trial, the failure to do so could not be used against him, and that at trial the jury must return a unanimous verdict before he could be found guilty or not guilty.

The defendant specifically acknowledged understanding these rights and understanding that by entering a plea of guilty there would be no trial and he will be waiving or giving up the rights I explained.

The defendant was informed that parole has been abolished and that any sentence of imprisonment must be served, and that his guilty plea may result in loss of important civil rights, such as the right to vote, to hold public office, to serve on a jury, and to possess a firearm. The defendant confirmed that he understood these consequences of the guilty plea.

1 **E. Factual Basis for the Guilty Plea**

2 Defendant was read in open court Counts Two and Five of the indictment and
3 provided an explanation of the elements of the offense. The meaning of terms used in the
4 indictment was explained. Further, upon questioning, the defendant admitted to facts
5 constituting all of the elements of the offense charged in Counts Two and Five and that
6 the evidence the government had available to establish, in the event defendant elected to
7 go to trial, the defendant's guilt beyond a reasonable doubt.
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9 **F. Voluntariness**

10 The defendant indicated that he was not being forced to plead guilty but was
11 entering such a plea freely and voluntarily because in fact he is guilty, and that no one
12 had threatened him or offered a thing of value in exchange for his plea. He acknowledged
13 that no one had made any different or other promises in exchange for his guilty plea,
14 other than the recommendations set forth in the plea agreement. Throughout the hearing
15 the defendant was able to consult with his attorney.
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17 **IV. Conclusion:**

18 The defendant, by consent, appeared before me pursuant to Rule 11 of the Federal
19 Rules of Criminal Procedure, and entered a plea of guilty as to Counts Two and Five of
20 the indictment. After cautioning and examining the defendant under oath and in open
21 court concerning each of the subject matters mentioned in Rule 11, I find that the
22 defendant, Kevin Borges-Sanchez is competent to enter this guilty plea, is aware of the
23 nature of the offense charged and the maximum statutory penalties that it carries,
24 understands that the charge is supported by evidence and a basis in fact, has admitted to
25 the elements of the offense, and has done so in an intelligent and voluntary manner with
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1 full knowledge of the consequences of his guilty plea. Therefore, I recommend that the
2 court accept the guilty plea and that the defendant be adjudged guilty as to Counts Two
3 and Five of the indictment.

4 This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B) and
5 Rule 72(d) of the Local Rules of this Court. Any objections to the same must be specific
6 and must be filed with the Clerk of Court **within 14 days**. Failure to file timely and
7 specific objections to the report and recommendation is a waiver of the right to appellate
8 review. *See Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Davet v. Maccorone*, 973 F.2d 22,
9 30–31 (1st Cir. 1992); *Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co.*, 840 F.2d
10 985 (1st Cir. 1988); *Borden v. Sec’y of Health & Human Servs.*, 836 F.2d 4, 6 (1st Cir.
11 1987).

12 **IT IS SO RECOMMENDED.**

13 In San Juan, Puerto Rico this 9th day of September, 2024.

14 S/Héctor L. Ramos-Vega
15 HÉCTOR L. RAMOS-VEGA
16 UNITED STATES MAGISTRATE JUDGE
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